IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 9556 of 2004

Between:

D. Bharathi Devi, W/o. T. Seshagiri Rao,
Mahabubia High School, Warangal, Warangal District.

..... PETITIONER

AND

1 The Regional Joint Director of School Education, Warangal.
2 The District Educational Officer, Warangal, Warangal District.
3 The Secretary/ Correspondent, Mahabubia High School,
Warangal, Warangal District.
4 Smt. P. Saraladevi, W/o. & Age Not Known,
Mahabubia High School, Warangal, Warangal District.

.....RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner, the learned Government Pleader for School Education for respondents 1 and 2. No representation on behalf of the third respondent.

2. The writ petition is filed challenging the order in RC.No.11214/P1/2003, dated 14.02.2004 of the second respondent- District Educational Officer, Warangal informing the third respondent that the petitioner's candidature cannot be approved for appointment as a School Assistant from the category of Secondary Grade Teacher, as the Deputy Educational Officer, Warangal in her report had stated that the post of School Assistant had to be filled up " by science graduate" as per the norms. All the learned counsel are agreed that what the said report means is that as the available vacant post in Mehaboobia

Aided High School, Warangal is required to being filled up by a Science School Assistant, the petitioner who has social background cannot be appointed. On this agreed meaning of the impugned order the challenge by the writ petitioner is on the ground *inter alia* that the second respondent-District Educational Officer has no manner of power or authority to reject the proposal of the management.

3. Admittedly, the petitioner is a Secondary Grade Teacher as is the fourth respondent. The petitioner has a qualification of B.Ed with Arts and Social Methodology, while, the fourth respondent is a Science background Secondary Grade Teacher. A School Assistant vacancy arose in April, 2003 on the retirement of the incumbent. The management of the School addressed a letter, dated 27.06.2003 to the third respondent seeking a clarification with regard to the filling up of the post of a School Assistant enclosing therewith the particulars of persons who submitted applications for the said post. According to the management, there was no scope for filling up the vacant post of School Assistant by a person from Social background. The management is also stated to have promoted the petitioner as Social Assistant (Social), subject to ratification of the appointment, by the proceedings dated 22.07.2003. By the impugned orders however, as already noticed, the second respondent rejected the candidature of the petitioner for appointment as a School Assistant on the ground that a science background is required for filling up the vacant post.

4. The learned counsel for the petitioner Sri M.Sudheer Rao asserts and the learned Government Pleader concedes that the competent authority for approval or disapproval of the recommendations for filling up the posts of School Assistant, is the Regional Joint Director of School Education, in this case of Warangal District. It is also established as well as the conceded position that the District Educational Officer has no role whatsoever to play except perhaps to forward any proposals for such ratification to the Regional Joint Director, when such proposals are submitted to him. Oblivious of these limitations, the second respondent considered it appropriate to assert a decisional role with regard to approval of proposals for appointment to the posts of School Assistant. The impugned order thus constitutes an illegal exercise of non available jurisdiction, which is accordingly set aside, as it must.

5. It is not clear as to why the management-third respondent has chosen to forward the proposals regarding the appointment of the petitioner as School Assistant to the second respondent when the competent authority is the first respondent. No statutory rule has been brought to the notice of this Court, which obligates that the proposals should be forwarded to the first respondent only, through the second respondent. Even if there be such a practice, it would be an obsolate practice productive of no public benefit except dilation of time and avoidable expenditure. It is sufficient if the management sends the proposals directly to the Regional Joint Director, School Education-first respondent. If the first respondent on receipt of such proposals considers it

necessary in any given case to ascertain the facts within the territorial jurisdiction of the second respondent, the first respondent would be at liberty to call for a report from the second respondent as to any factual aspect.

6 . In the absence of any statutory or administrative practice, this Court considers it appropriate to observe that the third respondent may send up proposals directly to the first respondent with regard to the filling up of the vacant post of School Assistant in the Mehboobia High School, Warangal, and it is directed that within three weeks from the date of such proposals from the management, the first respondent shall pass orders either approving or disapproving the candidature of any person recommended for appointment to the post of School Assistant. As the second respondent has passed the impugned order rejecting the proposals for approval of the appointment of the petitioner to the post of School Assistant without any jurisdiction whatsoever, this Court considers it appropriate to allow the writ petition with costs quantified at Rs.1500/- payable by the second respondent to the petitioner within three weeks from the date of receipt of a copy of this order.

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kvrm 29-09-2005